

MILPERSMAN 5812-010

SETTING ASIDE NONJUDICIAL PUNISHMENTS (NJP)

Responsible Office	NAVPERSCOM (PERS-00J)	Phone:	DSN	882-3166
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References	(a) Uniform Code of Military Justice (UCMJ), Article 15(d) (b) Manual for Courts-Martial (MCM), Part V (c) JAGINST 5800.7D, Manual of the Judge Advocate General (JAGMAN), Section 0118(b)
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1. **Policy**. This article applies to both officer and enlisted personnel. Per references (a), (b), and (c), the nonjudicial punishment (NJP) authority who imposed punishment, their successor in command, or a receiving NJP authority over the person punished may set aside punishment if the punishment resulted in a clear injustice and, absent unusual circumstances, was awarded within 4 months.

2. **Rationale**. The basis for any set aside action is a determination that, under all the circumstances of the case, the punishment has resulted in a "clear injustice."

a. **Clear injustice**. "Clear injustice" means that there exists an unwaived legal or factual error that clearly and affirmatively injures the substantial rights of the servicemember. An example of clear injustice would be the discovery of new evidence unquestionably exculpating the servicemember. Clear injustice does not include the fact that the servicemember's performance has been exemplary subsequent to the punishment or that the punishment may have a future adverse effect on the retention or promotion potential of the servicemember.

b. **Time Frame**. The power to set aside punishment, absent "unusual circumstances," will be exercised within 4 months after the punishment has been executed. By way of example only, unusual circumstances comprise the discovery of new evidence clearly exculpating the servicemember or material mistake which by due diligence could not have been discovered within the 4-month window.

c. **Effects of improper set asides.** Commanders should be cognizant of the effects of improperly setting aside a NJP. Such effects can include

- disadvantaging Sailors who have not committed misconduct, especially in the area of advancement;
- denying detailers and gaining commands relevant information concerning the reliability of the affected Sailors;
- subjecting the Navy to financial reimbursement in the case of restored reductions of rate; and
- in officer cases, denying the chain of command relevant information regarding the officer's fitness for promotion.

3. **Action**

a. To process set aside of an NJP in whole or in part, the NJP authority shall prepare and personally sign (not "by direction") a Letter of Notification (LON) in the format below. If a set aside is directed by a command other than the command that imposed the NJP, the submitting NJP authority shall send an information copy to the command that initially imposed punishment.

b. The reasons for set aside shall be clearly explained and demonstrate a clear injustice in the LON per para. 2a above. A mere conclusory statement that an injustice has occurred is insufficient. A detailed explanation and analysis must be provided.

c. LONs directing set asides outside the 4-month window shall justify the unusual circumstances for the delay per para. 2b above.

d. The LON must be forwarded by the NJP authority via the first flag officer in the NJP authority's chain of command to Navy Personnel Command (NAVPERSCOM), Office of Legal Counsel (PERS-00J). LONs that do not comply with the procedural requirements of this article will be returned without further action.

e. LONs that do comply with the procedural requirements of this article will be forwarded for NAVPERSCOM flag review.

f. NAVPERSCOM, Enlisted Performance and Separations Section (PERS-832)/Officer Performance and Separations Section (PERS-834) will subsequently direct NAVPERSCOM, Records Management/Policy Section (PERS-312E) to expunge from the servicemember's permanent personnel record all documents pertaining to the NJP that have been set aside. If a reduction in rate is set aside, the date of restoration must revert to original date of advancement and time in rate, thereby entitling member to full reimbursement of back pay. NAVPERSCOM (PERS-832/PERS-834) will subsequently notify the NJP authority and member when NAVPERSCOM review has been completed and local action is appropriate.

g. The NJP authority will ensure all local records are purged of any notations of NJP hearing and/or punishments awarded which have been set aside, and their residual effects.

h. Correction of pay and allowances is to be accomplished by the command personnel office or servicing Personnel Support Activity Detachment (PERSUPP DET) immediately after NAVPERSCOM review is complete per MILPERSMAN 1070-310 and the Navy Standard Integrated Personnel System (NSIPS). NAVPERSCOM does not act as approval authority or have capability to correct or adjust pay and allowances. Correspondence regarding those matters should be addressed to the following:

NSIPS Help Desk
DSN: 647-5110
Toll Free: 1-877-589-5991
Fax DSN: 674-0342
E-Mail: nsipshelp@cnrf.navy.mil

i. Performance evaluation documents and related correspondence may only be removed from record if a special report was issued as a result of NJP. For periodic or transfer reports, specific references to NJP, trait marks, and promotion recommendations may not be changed by NAVPERSCOM as a result of the set aside action. For records or documents which may not be corrected by set aside action, servicemember should be advised to petition Board for Correction of Naval Records (BCNR) for additional corrective action.

NOTE 1: Mitigation of punishment is a reduction in either the quantity or quality of a punishment, its general

nature remaining the same. To mitigate punishment per reference (b) (para. 6b), use,

- **if pay is involved**, NAVPERS 1070/607 (Rev. 10-00), Court Memorandum; or
- **if no pay is involved**, NAVPERS 1070/613 (Rev. 7-06), Administrative Remarks;

to correct the original document. Reduction in paygrade may be mitigated to forfeiture of pay **only** within 4 months after date of execution and forfeitures may not exceed the total amount of forfeitures that could have been awarded at NJP. Both original and corrected NAVPERS 1070/607s will be filed as part of member's official record. Do not issue a LON in a modified format to NAVPERSCOM (PERS-4832) for mitigation.

NOTE 2: See MILPERSMAN 1430-020 for procedures regarding advancement after reduction in rate.

4. **Sample LON.** Use this LON for setting aside an NJP (use the proper letter format):

From: (Command setting aside punishment)
To: Commander, Navy Personnel Command (PERS-00J)

Subj: SET ASIDE OF NJP ICO (GRADE/RATE, NAME, SSN)

Ref: (a) Manual for Courts-Martial (MCM), Part V, Para. 6d

1. I hereby set aside the nonjudicial punishment (NJP) proceeding in case of (Grade/Rate, Name). All rights, privileges, and property affected by virtue of execution of this punishment shall be restored. Per reference (a), request you remove from (Grade/Rate, Name's) official record all reference to NJP hearing which has been set aside. Request copy-to addressees take appropriate restorative action in case of (Grade/Rate, Name) and notify me and member concerned when completed.

2. Following identifying information is provided:

a. Name: (Grade/Rate, Name, SSN)

b. Date of NJP: (Date)

c. Imposing Command: (If different from command setting aside, indicate by Standard Navy Distribution List (SNDL) long title and forward a copy of Letter of Notification (LON) to that command.)

d. Offenses of which member was found guilty:

e. Punishment awarded:

f. Rationale for set aside: (Describe the "clear injustice" requiring set aside.)

g. Unusual circumstance(s): (If set aside is to take place greater than 4 months since punishment was executed, explanation as to the unusual circumstance(s) present.)

3. This letter shall not be filed in (Grade/Rate, Name's) official record, but shall be destroyed after your action is complete.

4. POC: (Name, Telephone Number)

Signature of NJP Authority
(not "By direction")

Copy to:
(command which imposed punishment)
(cognizant personnel office)
(cognizant disbursing office if pay affected)
(member concerned)